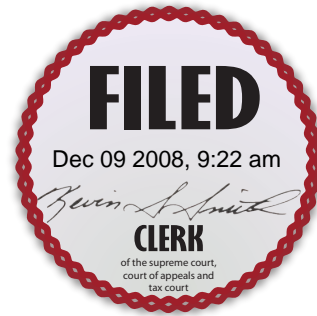


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CURTIS CHAPMAN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0803-CR-156
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael Jensen, Magistrate
Cause No. 49G20-0402-FA-20942

December 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Curtis Chapman appeals his conviction for class C felony possession of cocaine.¹

We affirm.

ISSUE

Whether the evidence was sufficient to support Chapman's conviction.

FACTS

On February 3, 2004, Jeffrey McPherson, a narcotics investigator with the Metropolitan Drug Task Force, served a warrant on the Indianapolis home of Conway Jefferson to search for evidence of drug trafficking. Officers had conducted surveillance of the residence for approximately thirty minutes prior to serving the warrant and did not observe anyone enter or leave the residence.

Upon entering the home, Officer McPherson "smelled the odor of burning or burnt marijuana." (Tr. 361). Chapman, Jefferson and Andre Davis were playing cards in the dining room. A marijuana cigarette and a "clear plastic bag with marijuana in the bag" were lying on the dining room table. (Tr. 494).

As he entered the kitchen, Officer McPherson "smelled what [he] knew to be associated with cooking cocaine, making powder cocaine into crack." (Tr. 361). He also observed what appeared to be cocaine in a Pyrex measuring cup next to the kitchen sink. The Pyrex measuring cup was sitting in a pan, which contained water and ice cubes.

¹ Ind. Code § 35-48-4-6.

Tests later revealed that the Pyrex cup contained approximately sixty-six grams of crack cocaine. A spoon with cocaine residue on it sat next to the pan. (Tr. 496).

The cocaine was located approximately twelve feet from where Chapman, Davis and Jefferson had been sitting. Although a wall separated the dining room from the kitchen, there was no door between the two rooms; thus, the kitchen sink was visible through the doorway between the kitchen and dining room. A further search of the residence revealed a scale in a kitchen cupboard, plastic sandwich bags, a handgun under a sofa cushion in the living room, another handgun in the bedroom, and approximately \$4,000.00 in a hall closet.

Officers recovered ten plastic bags containing a total of twenty-five grams of crack cocaine and four grams of powder cocaine from Jefferson's pocket. From Davis' pockets, they recovered \$5,800.00 and a "key fob with a key with a Budget Rental car tag on it." (Tr. 461). Officers did not locate any drugs, drug paraphernalia or cash on Chapman's person.

Using the key fob's vehicle locator button, Officer Eric Ledoux located a Ford Taurus, which was parked near the residence. Officers discovered a bag inside the vehicle's trunk. The bag contained several clear plastic bags, containing a total of 636 grams of cocaine. Officers also discovered a scale and a cutting agent in the vehicle. According to a rental agreement found in the Taurus' glove compartment, it had been rented by the mother of Davis' girlfriend.

On February 6, 2004, the State charged Chapman, Jefferson and Davis with class A felony dealing in cocaine and class C felony possession of cocaine. Specifically, the State charged that they “did knowingly possess with intent to deliver a controlled substance, that is: cocaine, in an amount greater than three (3) grams”; and “did knowingly possess a controlled substance, that is: cocaine, in an amount greater than three (3) grams[.]” (App. 33, 37). On March 2, 2004, the State filed an amended information, charging Davis with an additional count of both class A felony dealing cocaine and class C felony possession of cocaine.

The trial court commenced a jury trial of all three defendants on September 6, 2007. Chapman moved for a directed verdict, which the trial court denied. The jury found Chapman guilty of class C felony possession of cocaine.² The trial court sentenced Chapman to three years in the Department of Correction.

DECISION

Chapman asserts that the evidence was insufficient to support his conviction because the State “failed to prove any connection between Chapman, a temporary visitor to the home, and the cocaine cooking occurring in another room of the home during his visit”; and “failed to connect Chapman in any way with the other cocaine recovered by police including that found in Jefferson’s pocket and in the trunk” of the Taurus. Chapman’s Br. at 10. Thus, he argues that the State failed to prove that he possessed the cocaine.

² The jury found Davis and Jefferson guilty as charged. This Court affirmed their convictions.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

To convict Chapman of class C felony possession of cocaine, the State was required to prove that he knowingly possessed at least three grams of cocaine. *See* I.C. § 35-48-4-6.

This court has long recognized that a conviction for possession of contraband may be founded upon actual or constructive possession. Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband.

In cases where the accused has exclusive possession of the premises on which the contraband is found, an inference is permitted that he or she knew of the presence of contraband and was capable of controlling it. However, when possession of the premises is non-exclusive, the inference is not permitted absent some additional circumstances indicating knowledge of the presence of the contraband and the ability to control it. Among the recognized "additional circumstances" are: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) contraband is in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant.

Holmes v. State, 785 N.E.2d 658, 660-61 (Ind. Ct. App. 2003) (citations omitted). “These circumstances apply to show constructive possession even where the defendant is only a visitor to the premises where the contraband is found.” *Collins v. State*, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005) (citing *Ledcke v. State*, 260 Ind. 382, 296 N.E.2d 412, 416 (1973)), *trans. denied*.

It is undisputed that Chapman did not exercise exclusive control of the premises where the cocaine was found. Thus, the State was required to present evidence of additional circumstances indicating Chapman’s knowledge of the presence of the cocaine and his ability to control it.

Here, Chapman had been in the residence for at least thirty minutes prior to the search warrant being executed. Upon entering the residence, officers discovered approximately sixty-six grams of crack cocaine in the residence’s kitchen. The crack cocaine was in a Pyrex measuring cup, which was sitting in a pan of water and several ice cubes. The presence of water and ice cubes indicated that the cocaine was still in the process of being cooked as ice is used to make the cocaine “harden faster.” (Tr. 494). Officer McPherson testified that he could smell the “[f]airly distinctive” odor of cocaine being cooked, which “stinks.” (Tr. 336).

Officers also discovered a spoon containing cocaine residue, a scale and plastic baggies in the kitchen. Officer McPherson testified that scales are used to weigh cocaine while baggies are used to package it. Such evidence was sufficient to demonstrate a drug manufacturing setting. *See* I.C. § 35-48-1-18 (defining “manufacture” as the

“compounding, conversion, or processing of a controlled substance . . . and includes any packaging or repackaging of the substance or labeling or relabeling of its container”).

Furthermore, Chapman was sitting in a room adjacent to the kitchen, where the cocaine was being cooked. Officer Jason Bradbury testified that the distance between Chapman and the cocaine was approximately “[t]welve, fifteen feet.” (Tr. 404). Officer Steven Kinkade testified that kitchen was visible, and could be accessed, from the dining room. The evidence therefore shows that Chapman was in close proximity to the cocaine.

Given the drug manufacturing setting and Chapman’s close proximity to the cocaine, the jury could have reasonably inferred that Chapman knew of the cocaine and was capable of controlling it. Accordingly, there was sufficient evidence to support his conviction for class C felony possession of cocaine.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.